

(2009) 09 SHI CK 0009

In the High Court Of Himachal Pradesh

Himachal Pradesh B.Ed. College Welfare Association and Ms.
Ritika and Others

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 03-09-2009

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2009) 2 ShimLC 482

Hon'ble Judges : R.B. Misra, Acting C.J.;Rajiv Sharma, J

Bench : Division Bench

Judgement

Rajiv Sharma, J.—Since common questions of law and facts are involved in these petitions, the same were taken up together for hearing and are being disposed of by a common judgment.

2. CWP No. 2495/2009 has been filed by the Himachal Pradesh B.Ed. Colleges Welfare Association seeking quashing of notification dated 13.7.2009 and also for quashing the imposition of condition of 50% marks and CWP No. 2781/2009 has been filed on behalf of the students' community assailing the imposition of condition of 50% marks in qualifying examination.

3. The respondent-University has issued prospectus/brochure for admission to B.Ed. course in Department of Education and Colleges of Education in Himachal Pradesh for the academic session 2009-2010. Para 2 (d) of the prospectus mentions that respondent No. 3 has approved total 100 seats, out of which 50 seats in Non-Medical Stream, 30 in Medical Stream, 15 in Arts Stream and 5 in Commerce Stream, which are to be filled up as per 100 point roster. This distribution was subject to change as per orders from competent authority from time to time. Para 3 of the prospectus lays down eligibility for applying to the course. Relevant portion of the same reads thus:

3. Eligibility for Applying to the Course.-The candidates who wish to apply for the regular course in any of the colleges of Education recognized NCTE and affiliated

to H.P. University should fulfill the following criteria.

(a) The applicant should possess either a Bachelor's Degree (Medical, Non-Medical, Arts/Commerce) or Master's degree or any other qualification equivalent thereto with at least 50% marks (45% in case of SC, ST, and Ex-serviceman categories) from a recognized university established by law in India. Provided further that for the purpose of eligibility for admission to the course 0.50% or above shall be considered equal to 1%) as per (Notification No. 4-9/94-HPU (Acad) dated 27.6.1995)

(b) The candidate should not be of more than 26 years (General Category boy candidates), 28 years (General category, girl candidates), 29 years (SC and ST candidates both boys and girls) of age, on 1.7.2009.

The age for eligibility to admission in case of Ex-serviceman will be calculated by the formula: Actual age-years of service rendered in the services. The age thus calculated should not exceed that of the age of fresh candidates of their respective category.

4. There are three streams in B.Ed. Course, namely, Medical Stream, Non-Medical Stream and Arts/Commerce Stream. Para 4 of the prospectus prescribes the basis of admission, which reads thus:

4. The Basis of Admission.-The admission to the course will be made strictly on the basis of marks obtained in B.A./B.Sc./B.Com., Post Graduation examinations of any recognized university. Hundred per cent of the seats in Deptt. Of Education H.P.U. Shimla and Govt. College of Teacher Education Dharmashala are subsidized and roster of reservation will be applicable on all seats available in the respective institutions.

The admissions to all the other colleges of education under self-financing scheme will be made against the subsidized and non-subsidized seats. Out of all the seats available in each college under self-financing scheme, 50% are subsidized and 50% are non-subsidized. 10% of the seats of non-subsidized category have been reserved as "Management Quota". Hence, the university will fill up 95% of the seats in each college under self-financing schemes and 5% will be filled up by the college management strictly in accordance with the eligibility conditions for B.Ed. Course. No deviation from this will be allowed.

5. The petitioners have also placed on record copy of Appendix-IV laying down the norms and standards for Secondary Teacher Education Programme leading to Bachelor of Education (B. Ed.) Degree. Para 4.0 dealing with the intake, eligibility and admission procedure reads thus:

4.0. Intake, Eligibility and Admission Procedure

3.1. Intake

There shall be a basic unit of 100 students divided into two Sections of 50 each for general sessions and not more than 25 students per teacher for a school

subject for methods courses and other practical activities of the programme to facilitate participatory teaching and learning.

3.2. Eligibility

3.2.1. Candidates with at least 45% marks either in the Bachelor's Degree and/or in the Master's degree or any other qualification equivalent thereto, are eligible for admission to the programme.

3.2.2. The reservation for SC/ST/OBC and other categories shall be as per the rules of the Central Government/State Government, whichever is applicable. There shall be relaxation of 5% marks in favour of SC./ST/OBC and other categories of candidates.

3.3. Admission Procedure.

Admission shall be made on merit on the basis of marks obtained in the qualifying examination and/or in the entrance examination or any other selection process as per the policy of the State Government/U.T. Administration and the University.

6. Mr. K.D. Shreedhar, Advocate with Ms. Suman Thakur, Advocate have strenuously argued that once the norms have been prescribed by respondent No. 3, it was not open for the State to add/improve the same. The precise submission of Mr. K.D. Shreedhar is that once the candidates with at least 45% marks either in Bachelor's Degree or in Master's Degree or any other qualification equivalent thereto are eligible for admission to the programme as per Annexure P-3, the State Government could not enhance the same to 50% as enumerated in the prospectus. He has also argued that once the seats have been allotted/allocated by respondent No. 3 to the petitioner's institutions, the same cannot be further distributed by the State Government in the ratio of 50% Arts/Commerce, 25% Medical and 25% Non-Medical Streams. Mr. J.L. Bhardwaj, Advocate has adopted the arguments of Mr. K.D. Shreedhar, Advocate.

7. Mr. R.K. Bawa, learned Advocate General has vehemently argued that it is always open to the State Government to prescribe higher percentage of marks than prescribed by respondent No. 3 for professional courses. His precise submission is that the State Government has neither diluted nor deviated from the norms prescribed by respondent No. 3 for admission to B.Ed. Course. He has justified the decision of the State Government taken vide Annexure P-7 dated 13.7.2009 whereby the distribution of seats has been prescribed, as noticed above.

8. We have heard the learned Counsel for the parties at length and have gone through the pleadings of the parties.

9. The All India Council for Teacher Education i.e. respondent No. 3 as per para 4.0 (3.2) has prescribed that the candidates with at least 45% marks either in the Bachelor's Degree or in the Master's Degree or any other qualification

equivalent thereto are eligible for admission to the programme. The State Government in its own wisdom has prescribed at least 50% marks either in Bachelor's Degree or in Master's Degree as per para 3 of the prospectus.

10. Mr. K.D. Shreedhar has strongly relied upon State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others, to buttress his submission. He has relied upon para 41 of the judgment, which reads thus:

41. What emerges from the above discussion is as follows:

(I) The expression "co-ordination" used in Entry 66 of the Union List, of the Seventh Schedule to the Constitution does not merely mean evaluation. It means harmonisation with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also include power to do all things which are necessary to prevent what would make "co-ordination" either impossible or difficult. This power is absolute and unconditional and in the absence of any valid compelling reasons, it must be given its full effect according to its plain and express intention.

(II) To the extent that the State legislation is in conflict with the central legislation though the former is purported to have been made under Entry 25 of the Concurrent List but in effect encroaches upon legislation including subordinate legislation made by the Centre under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, it would be void and inoperative.

(III) If there is a conflict between the two legislations, unless the State legislation is saved by the provisions of the main part of Clause (2) of Article 254, the State legislation being repugnant to the central legislation, the same would be inoperative.

(IV) Whether the State law encroaches upon Entry 66 of the Union List or is repugnant to the law made by the Centre under Entry 25 of the Concurrent List, will have to be determined by the examination of the two laws and will depend upon the facts of each case.

(V) When there are more applicants than the available situations/seats, the State authority is not prevented from laying down higher standards or qualifications than those laid down by the Centre or the Central authority to short-list the applicants.

When the State authority does so, it does not encroach upon Entry 66 of the Union List or make a law which is repugnant to the central law.

(VI) However, when the situations/seats are available and the State authorities deny an applicant the same on the ground that the applicant is not qualified according to its standards or qualifications, as the case may be, although the applicant satisfies the standards or qualifications laid down by the central law,

they act unconstitutionally. So also when the State authorities de-recognise or disaffiliate an institution for not satisfying the standards or requirement laid down by them, although it satisfied the norms and requirements laid down by the central authority, the State authorities act illegally.

11. State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others, has argued that when the seats are available, it is not open to the State Government to insist that the candidates are not qualified according to its standards. This judgment was rendered by Hon"ble two Judges.

12. The Constitution Bench in Dr Preeti Srivastava and Another Vs. State of M.P. and Others, was also seized of the matter and has formulated the following point: Who should decide the qualifying marks and will it affect the standard of education? Their Lordships in para 39 of the judgment have laid down that in every case the minimum standard as laid down by the Central statute or under it have to be complied with by the State while making admissions. It may, in addition, lay down other additional norms for admission or regulate admissions in the exercise of its powers under Entry 25 List-III in a manner not inconsistent with or in a manner which does not dilute the criteria so laid down. Their Lordships have held as under:

34. Learned Counsel for the States of Uttar Pradesh and Madhya Pradesh contend that it is for the States to decide the qualifying marks which should be prescribed for the reserved category, candidates at the PGMEET. It is a matter of State policy. The Medical Council of India cannot have any say in prescribing the qualifying marks for the PGMEET. The two States have contended that it is the State which controls admissions to the post-graduate courses in medicine. It is for the State to decide whether to provide a common entrance examination or not. This examination may or may not have any minimum qualifying marks or it may have different qualifying marks for different categories of candidates. It is, therefore, not open to any other authority to interfere with the rules for admission to the post-graduate medical courses in each State. They have also contended that a common entrance examination is merely for the purpose of screening candidates and since all the candidates have passed the M.B.B.S. examination the standard is not affected even if no minimum marks are prescribed for passing the common entrance examination. The latter argument we have already examined and negatived. The other contention, however, relating to the power of the State to control admissions to the post-graduate courses in medicine requires to be examined.

35. The legislative competence of the Parliament and the legislatures of the States to make laws under Article 246 is regulated by the VIIth Schedule to the Constitution. In the VIIth Schedule as originally in force, Entry 11 of List II gave to the States an exclusive power to legislate on "Education including universities subject to the provisions of Entries 63, 64, 65 and 66 of List-I and Entry 25 of List III." Entry 11 of List-II was deleted and Entry 25 of List III was amended with effect from 3-1-1976 as a result of the Constitution 42nd Amendment Act of

1976. The present Entry 25 in the Concurrent List is as follows :

Entry 25, List III: Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I : Vocational and technical training of labour.

Entry 25 is subject, inter alia, to Entry 66 of List-I. Entry 66 of List-1 is as follows :

Entry 66, List I: Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

Both the Union as well as the States have the power to legislate on education including medical education, subject, inter alia, to Entry 66 of List-I which deals with laying down standards in institutions for higher education or research and scientific and technical institutions as also coordination of such standards. A State has, therefore, the right to control education including medical education so long as the field is not occupied by any Union Legislation. Secondly, the State cannot, while controlling education in the State, impinge on standards in institutions for higher education. Because this is exclusively within the purview of the Union Government. Therefore, while prescribing the criteria for admission to the institutions for higher education including higher medical education, the State cannot adversely affect the standards laid down by the Union of India under Entry 66 of List-I. Secondly, while considering the cases on the subject it is also necessary to remember that from 1977 education including, inter alia, medical and university education, is now in the Concurrent List so that the Union can legislate on admission criteria also. If it does so, the State will not be able to legislate in this field, except as provided in Article 254.

36. It would not be correct to say that the norms for admission have no connection with the standard of education, or that the rules for admission are covered only by Entry 25 of List III. Norms of admission can have a direct impact on the standards of education. Of course, there can be rules for admission which are consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers under Entry 66 of List-I. For example, a State may, for admission to the post-graduate medical courses, lay down qualifications in addition to those prescribed under Entry 66 of List-I. This would be consistent with promoting higher standards for admission to the higher educational courses. But any lowering of the norms laid down can, and do have an adverse effect on the standards of education in the institutes of higher education. Standards of education in an institution or college depend on various factors. Some of these are:

- (1) The calibre of the teaching staff;
- (2) A proper syllabus designed to achieve a high level of education in the given span of time;
- (3) The student-teacher ratio;

- (4) The ratio between the students and the hospital beds available to each student;
- (5) The calibre of the students admitted to the institution;
- (6) Equipment and laboratory facilities, or hospital facilities for training in the case of medical colleges;
- (7) Adequate accommodation for the college and the attached hospital; and
- (8) The standard of examinations held including the manner in which the papers are set and examined and the clinical performance is judged.

37. While considering the standards of education in any college or institution, the calibre of students who are admitted to that institution or college cannot be ignored. If the students are of a high calibre, training programmes can be suitably moulded so that they can receive the maximum benefit out of a high level of teaching. If the calibre of the students is poor or they are unable to follow the instructions being imparted, the standard of teaching necessarily has to be lowered to make them understand the course which they have undertaken; and it may not be possible to reach the levels of education and training which can be attained with a bright group. Education involves a continuous interaction between the teachers and the students. The pace of teaching, the level to which teaching can rise and the benefit which the students ultimately receive, depend as much on the calibre of the students as on the calibre of the teachers and the availability of adequate infrastructural facilities. That is why a lower student-teacher ratio has been considered essential at the levels of higher university education, particularly when the training to be imparted is highly professional training requiring individual attention and on-hand training to the pupils who are already doctors and who are expected to treat patients in the course of doing their post-graduate courses.

38. The respondents rely upon some observations in some of the judgments of this Court in support of their stand that it is for the State to lay down the rules and norms for admission; and that these do not have any bearing on the standard of education. In *Minor P. Rajendran Vs. State of Madras and Others*, a Constitution Bench of this Court considered the validity under Articles 14 and 15(1), of district-wise reservations made for seats in the medical colleges. In that case, the Act in question prescribed eligibility and qualifications of candidates for admission to the medical colleges. The Court observed, "So far as admission is concerned, it has to be made by those who are in control of the colleges - in this case, the Government. Because the medical colleges are Government colleges affiliated to the university. In these circumstances, the Government was entitled to frame rules for admission to medical colleges controlled by it, subject to the rules of the university as to eligibility and qualifications. This was what was done in these cases and, therefore, the selection cannot be challenged on the ground that it was not in accordance with the University Act and rules framed thereunder." This Court, therefore, upheld

the additional criteria framed by the State for admission which were not inconsistent with the norms for admission laid down by the University Act. Since these additional qualifications did not diminish the eligibility norms under the University Act, this Court upheld the additional criteria laid down by the State as not affecting the standards laid down by the University Act. The question of diluting the standards laid down, did not arise.

39. The respondents have emphasised the observation that admission has to be made by those who are in control of the colleges. But, the question is, on what basis? Admissions must be made on a basis which is consistent with the standards laid down by a statute or regulation framed by the Central Government in the exercise of its powers under Entry 66, List I. At times, in some of the judgments, the words "eligibility" and "qualification" have been used interchangeably, and in some cases a distinction has been made between the two words - "eligibility" connoting the minimum criteria for selection that may be laid down by the University Act or any Central Statute, while "qualifications" connoting the additional norms laid down by the colleges or by the State. In every case the minimum standards as laid down by the Central Statute or under it, have to be complied with by the State while making admissions. It may, in addition, lay down other additional norms for admission or regulate admissions in the exercise of its powers under Entry 25 List III in a manner not inconsistent with or in a manner which does not dilute the criteria so laid down.

13. This question has also been gone into by their Lordships of the Hon'ble Supreme Court in *State of Tamil Nadu and Another Vs. S.V. Bratheep (Minor) and Others*, Their Lordships have held as under:

9. Entry 25 of List III and Entry 66 of List I have to be read together and it cannot be read in such a manner as to form an exclusivity in the matter of admission but if certain prescription of standards have been pursuant to Entry 66 of List I, then those standards will prevail over the standards fixed by the State in exercise of powers under Entry 25 of List III insofar as they adversely affect the standards-laid down by the Union of India or any other authority functioning under it. Therefore, what is to be seen in the present case is whether the prescription of the standards made by the State Government is in any way adverse to, or lower than, the standards fixed by the AICTE. It is no doubt true that the AICTE prescribed two modes of admission-One is merely dependent on the qualifying examination and the other dependent upon the marks obtained at the Common Entrance Test. The appellant in the present case prescribed the qualification of having secured certain percentage of marks in the related subjects which is higher than the minimum in the qualifying examination in order to be eligible for admission. If higher minimum is prescribed by the State Government than what had been prescribed by the AICTE, can it be said that it is in any manner adverse to the standards fixed by the AICTE or reduces the standard fixed by it? In our opinion, it does not. On the other hand, if we proceed on the basis that the norms fixed by the AICTE would allow admission

on the basis of the marks obtained in the qualifying examination the additional test made applicable is the common entrance test by the State Government. If we proceed to take the standard fixed by the AICTE to be the common entrance test then the prescription made by the State Government of having obtained certain marks higher than the minimum in the qualifying examination in order to be eligible to participate in the common entrance test is in addition to the common entrance test. In either even, the streams proposed in which the High Court has proceeded is that what has been prescribed by the AICTE is inexorable and that minimum alone should be taken into consideration and no other standard could be fixed even the higher as stated by this Court in Dr. Preeti Srivastava's case. It is no doubt true as noticed by this Court in Adhiyaman's case that there may be situations when a large numbers of seats may full vacant on account of the higher standards fixed. The standards fixed should always be realistic which are attainable and are within the reach of the candidates. It cannot be said that the prescriptions by the State Government in addition to those of AICTE in the present case are such which are not attainable or which are not within the reach of the candidates who seek admission for engineering colleges. It is not very high percentage of marks that has been prescribed as minimum of 60% downwards, but definitely higher than the mere pass marks. Excellence in high education is always insisted upon by series of decisions of this Court including Dr. Preeti Srivastava's case. If higher minimum marks have been prescribed, it would certainly add to the excellence in the matter of admission of the students in higher education.

10. Argument advanced on behalf of the respondent is that the purpose of fixing norms by the AICTE is to ensure uniformity with extended access of educational opportunity and such norms should not be tinkered with by the State in any manner. We are afraid, this argument ignores the view taken by this Court in several decisions including Dr. Preeti Srivastava's case that the State can always fix a further qualification or additional qualification to what has been prescribed by the AICTE and that proposition is indisputable. The mere fact that there are vacancies in the colleges would not be a matter, which would go into the question of fixing the standard of education. Therefore, it is difficult to subscribe to the view that once they are qualified under the criteria fixed by the AICTE they should be admitted even if they fall short of the criteria prescribed by the State. The scope of the relative entries in the Seventh Schedule to the Constitution have to be understood in the manner as stated in the Dr. Preeti Srivastava's case and, therefore, we need not further elaborate in this case or consider arguments to the contrary such as application of occupied theory no power could be exercised under Entry 25 of List III as they would not arise for consideration.

11. The argument advanced on behalf of the respondents that these matters are indeed governed by the decision in Islamic Academy of Education and Another Vs. State of Karnataka and Others, and T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, In fact this Court did not consider the question that has arisen for our consideration in the present case but was dealing with

entirely different issue in relation to fee structure of minority and non-minority educational institutions and whether private unaided professional colleges are entitled to fill their seats to the full extent by their own method of admission. That is not the issue before us at all. Therefore, no reliance could be placed by the respondents on the decisions either in TMA Pai Foundation or Islamic Academy case.

12. One other argument is further advanced before us that the criteria fixed by the AICTE was to be adopted by the respective colleges and once such prescription had been made it was not open to the Government to prescribe further standards particularly when they had established the institutions in exercise of their fundamental rights guaranteed under Article 19 of the Constitution. However, we do not think this argument can be sustained in any manner. Prescription of standards in education is always accepted to be an appropriate exercise of power by the bodies recognising the colleges or granting affiliation, like AICTE or the University. If in exercise of such power the prescription had been made, it cannot be said that the whole matter has been foreclosed.

14. Mr. K.D. Shreedhar has also relied upon Ashoka Kumar Thakur Vs. Union of India (UOI) and Others, He has drawn the attention of the Court to para 514, which reads thus:

514. Inamdar stated: (SCC p. 601, paras 124-25)

124. So far as appropriation of quota by the State and enforcement of its reservation policy is concerned, we do not see much of difference between non-minority and minority unaided educational institutions. We find great force in the submission made on behalf of the petitioners that the States have no power to insist on seat sharing in the unaided private professional educational institutions by fixing a quota of seats between the management and the State. The State cannot insist on private educational institutions which receive no aid from the State to implement State's policy on reservation for granting admission on lesser percentage of marks, i.e. on any criterion except merit.

125. As per our understanding, neither in the judgment of Pai Foundation nor in the Constitution Bench decision in Kerala Education Bill, which was approved by Pai Foundation, there is anything which would allow the State to regulate or control admissions in the unaided professional educational institutions so as to compel them to give up a share of the available seats to the candidates chosen by the State, as if it was filling the seats available to be filled up at its discretion in such private institutions. This would amount to nationalization of seats which has been specifically disapproved in Pai Foundation. Such imposition of quota of State seats or enforcing reservation policy of the State on available seats in unaided professional institutions are acts constituting serious encroachment on the right and autonomy of private professional educational institutions. Such appropriation of seats can also not be held to be a regulatory measure in the

interest of minority within the meaning of Article 30(1) or a reasonable restriction within the meaning of Article 19(6) of the Constitution. Merely because the resources of the State in providing professional education are limited, private educational institutions, which intend to provide better professional education, cannot be forced by the State to make admissions available on the basis of reservation policy to less meritorious candidate. Unaided institutions, as they are not deriving any aid from State funds, can have their own admissions if fair, transparent, non-exploitative and based on merit.

To the extent that Islamic Academy had approved of quotas in unaided institutions, a scheme in which the States could fix quota for seat sharing between management and the State, Islamic was overruled.

15. We are of the considered view that the State Government has not diluted from the standards laid down by the All India Council for Teacher Education. The State Government has only provided 50% qualifying marks instead of 45% marks under the norms prescribed by respondent No. 3. The decision of the State Government of prescribing 50% qualifying marks is not adverse or lower than the standards fixed by the AICTE. The availability of the vacancies in the colleges is not relevant for fixing the norms of standard of education. The wholesome principle of providing additional percentage of marks is to improve the standard of education. The persons, who are seeking admission to B. Ed. course have to impart education upto 10+2 standard after their appointment as Teachers. The scope of judicial review in these matters is very limited. It is for the academic institutions like Universities and the State Governments to prescribe the academic standards even if these are in addition to the norms prescribed by the regulatory bodies like AICTE. The decision of the State Government is neither unreasonable nor arbitrary. We uphold the decision of the State Government prescribing 50% marks for admission to B. Ed. course.

16. The Judgment rendered by their Lordships of the Hon^{ble} Supreme Court in Assistant Excise Commissioner and Others Vs. Issac Peter and Others, has also been considered by their Lordships of the Hon^{ble} Supreme Court in State of Tamil Nadu and Another Vs. S.V. Bratheep (Minor) and Others, The observations made by the Constitution Bench cannot be termed as obiter dicta as argued by Mr. K.D. Shreedhar. A specific question was formulated by their Lordships of the Hon^{ble} Supreme Court in Dr Preeti Srivastava and Another Vs. State of M.P. and Others, as noticed above.

17. Now, the Court has to advert to second question argued by Mr. K.D. Shreedhar. It is true that as per Annexure P-3, the basic unit provided to every education institution running B.Ed, course is 100 students. It has been specifically provided under para 4.0 (3.1). The State Government has, however, compartmentalized the same into three streams i.e. Arts/Commerce, Medical and Non-Medical. Mr. Shreedhar has argued that it is not open to the State Government to distribute the seats by taking a policy decision. According to him, it is for the institution concerned to admit the students from either of three

streams. He has also argued that the students admitted in B. Ed. courses in the State of Himachal Pradesh have not been guaranteed employment by the State Government. He further argued that the candidates who qualify the B. Ed. Examinations from the institutions can also seek employment in private sector and outside the State of Himachal Pradesh.

18. The learned Advocate General has argued that the decision has been taken on the basis of a committee constituted in larger public interest whereby the seats have been distributed as per Annexure P-7 dated 13.7.2009. He has vehemently argued that as of today there are large number of B. Ed. qualified students from Arts Stream vis-a-vis other two streams. According to him, as per norms prescribed, the ratio has to be maintained among the Trained Graduate Teachers (TGT) (Arts), TGT Non-Medical and TGT Medical. He has also argued that this ratio has been disturbed and there are few students with B. Ed. Medical and Non-Medical Streams available for appointment as Teachers. According to him, a policy decision has been taken to regulate the admission to B.Ed. Arts/Commerce and to maintain the balance by distributing the seats in the ratio as mentioned hereinabove.

19. We are of the considered opinion that it was open to the State Government to distribute the seats vide letter dated 9.7.2009. The State Government in its own wisdom on the basis of practical considerations has taken a conscious decision to maintain the balance among the three streams. The State Government has to employ the teachers from various streams and for doing so, the ratio has to be maintained. It is true that the State Government has not guaranteed employment to any of the persons, who qualify the B. Ed. examinations. However, it is a fact that majority of the candidates are recruited by the State Government as Trained Graduate Teachers/Post Graduate Teachers in various schools. The ratio prescribed in Government run schools is also required to be maintained by the private schools as per the norms prescribed. There is no illegality according to us in the decision taken by the State Government.

20. Having said so that the State can prescribe compartmentalization/distribution of seats, we are required to address the question: What will happen to the seats which remain vacant even after the ratio prescribed by the State vide Annexure P-7? The State Government previously vide Annexure P-6 has diluted the rigours of compartmentalization and has permitted conversion of other two streams into Arts Stream to facilitate the process of admission. This year also, the State Government has permitted/allocated seats more than the prescribed ratio only on the ground that the seats already stood allotted to various educational institutions. Thus it is apparent that the State Government has not followed any uniform practice. The ratio prescribed when the candidates are available has to be strictly adhered to in order to achieve the underlined goal. However, we hasten to add that in case the seats remain vacant and qualified students are available, the State shall permit the conversion of unutilized seats of Medical and

Non-Medical Streams to Arts/Commerce Stream. We make it clear by way of abundant precaution that even if the seats are converted from Science Stream to Art Stream, the minimum qualifying marks i.e. 50% shall be strictly adhered to.

21. Mr. K.D. Shreedhar has also drawn the attention of the Court to notification dated 13.7.2009 whereby the allotment criteria of B.Ed. seats has been prescribed. However, it is also mentioned therein that the criteria shall not be applicable to those institutions where the Government had already allotted seats more than 50% in Arts or Science specialty and in these colleges the earlier approved allotment will be applicable. The incorporation of this exemption clause in the notification dated 13.7.2009 suffers from invidious discrimination. Once the State Government has taken a decision to prescribe the ratio, the same cannot be diluted by allotting more than 50% seats in Arts or Science specialty on the pretext that the Government had already allotted seats to these institutions. In the institutions, mentioned at Sr. Nos. 10, 20, 22, 28, 47, 48, 51, 59, 60 and 64 of the prospectus Arts/Commerce seats have been allotted to these institutions disproportionately. This has not been justified by the State Government. All the institutions have to be treated alike. The ratio prescribed in the notification dated 13.7.2009 i.e. Arts/Commerce 50%, Science (Medical) 25% and Science (Non-Medical) 25% shall be made applicable to all the institutions uniformly in the current academic session subject to the observations made hereinabove. The seats shall be allotted accordingly.

22. In view of the observations made hereinabove, both the petitions are disposed of. There shall, however, be no order as to costs.